

**LANCE R. LEFLEUR**  
DIRECTOR

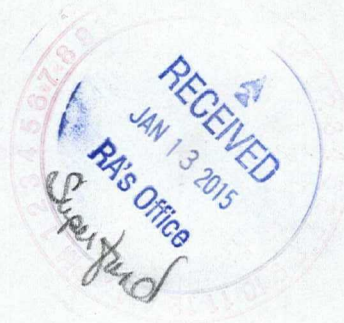


Alabama Department of Environmental Management  
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

January 8, 2015

*1. D. Riggs*  
**ROBERT J. BENTLEY**  
GOVERNOR



Docket Coordinator, Headquarters  
U.S. Environmental Protection Agency  
CERCLA Docket Office (Mailcode 5305T)  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Heather McTeer Toney, Regional Administrator  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street  
Atlanta, Georgia 30303

Ladies and/or Gentlemen:

This letter will serve as formal notice to the United States Department of Environmental Management (EPA) that the State of Alabama (the State or Alabama) and its primary environmental regulatory agency, the Alabama Department of Environmental Management (ADEM), jointly and individually, invoke the issue resolution process established by EPA for resolving disputes between states and the EPA regarding proposed listing on EPA's National Priorities List (NPL). This issue resolution process was established and is laid out in the July 25, 1997 memorandum titled "Coordinating with the States on National Priorities List Decisions – Issue Resolution Process" from Timothy Fields, Jr., Acting Assistant Administrator for the Office of Solid Waste and Emergency Response (the Fields Memo). The Fields Memo sets forth an internal EPA appeals process for use in circumstances where a State objects to EPA's proposal for listing a site on the NPL.

The State and ADEM object to the proposed listing on the NPL of the site known as 35<sup>th</sup> Avenue, Birmingham, Alabama (the Site). Based on this objection to listing and on EPA's continued pursuit of listing this Site, the State and ADEM invoke their rights under the Fields Memo. By this notice, no rights for appeal are waived, and it is the express position of the State and ADEM to seek their remedy for issue review under the procedures set forth in the Fields Memo and to ensure a complete administrative record on appeal.

The Fields Memo states "[i]n these cases [where the State does not agree that EPA should pursue NPL listing], the [EPA] Region should work closely with the State to resolve the issue before raising it to EPA Headquarters." "If the Region determines that the issue cannot be resolved at the Regional level, the Regional Superfund Division Director should inform the Director of the State, Tribal and Site Identification Center (ST/SI) of the Office of Emergency and Remedial Response (OERR) and/or the appropriate ST/SI Regional Coordinator."

**Birmingham Branch**  
110 Vulcan Road  
Birmingham, AL 35209-4702  
(205) 942-6168  
(205) 941-1603 (FAX)

**Decatur Branch**  
2715 Sandlin Road, S. W.  
Decatur, AL 35603-1333  
(256) 353-1713  
(256) 340-9359 (FAX)



**Mobile Branch**  
2204 Perimeter Road  
Mobile, AL 36615-1131  
(251) 450-3400  
(251) 479-2593 (FAX)

**Mobile-Coastal**  
3664 Dauphin Street, Suite B  
Mobile, AL 36608  
(251) 304-1176  
(251) 304-1189 (FAX)



Thereafter, the Fields Memo provides “[t]he State should have the opportunity to present its position in writing”. By this notice, the State seeks to exhaust its right for appeal of EPA’s proposed listing of the Site located at 35<sup>th</sup> Avenue, Birmingham, Alabama.

Attached in support of this appeal are the following scientific studies:

1. ATSDR, Evaluation of Air Exposures in Communities Adjacent to the 35th Avenue Site, Birmingham, Alabama (EPA FACILITY ID: ALN000410750) (June 26, 2014), *available at*:

[http://www.atsdr.cdc.gov/HAC/pha/NorthBirminghamAirSite/35th%20Avenue%20SitePHA\\_PC\\_06-26-2014\\_508.pdf](http://www.atsdr.cdc.gov/HAC/pha/NorthBirminghamAirSite/35th%20Avenue%20SitePHA_PC_06-26-2014_508.pdf) (hereinafter, “2014 ATSDR Evaluation”).

2. ATSDR, Assessment of Soil Exposures in Communities Adjacent to the Walter Coke Inc. Site (a/k/a 35th Avenue Coke Site) (EPA FACILITY ID: ALN000410750) (Aug. 1, 2013), *available at*:

[http://www.atsdr.cdc.gov/HAC/pha/WalterCokeInc/WalterCokeIncHC\(Final\)08012013508.pdf](http://www.atsdr.cdc.gov/HAC/pha/WalterCokeInc/WalterCokeIncHC(Final)08012013508.pdf) (hereinafter, “2013 ATSDR Soil Study”)

3. JCDH, Summary of the Comparison of Death Rates and Birth Outcomes of African-Americans Living in Collegeville, Fairmont and Harriman Park to African Americans Living in the Rest of Jefferson County, Alabama (Aug. 6, 2014) (hereinafter, “2014 JCDH Death Rates Comparison Report”)

4. JCDH Environmental Health Services, Air and Radiation Protection Division, Birmingham Air Toxics Study (Feb. 2009), *available at*:

<http://www.epa.gov/region4/air/airtoxic/2005-2006-Birmingham-Air-Toxics-Study-Final-Report.pdf>

5. EPA Region 4’s HRS Documentation Record, 35th Avenue, EPA ID No. ALN000410750 at 17 (Sept. 2014).

6. EPA, North Birmingham Air Toxics Risk Assessment (March 2013), *available at*:

<http://www.epa.gov/region4/air/airtoxic/North-Birmingham-Air-Toxics-Risk-Assessment-final-03282013.pdf>

7. EPA’s 2013 North Birmingham Air Toxics Risk Assessment at 1 (“excess cancer risks that range between  $1 \times 10^{-6}$  to  $1 \times 10^{-4}$  are considered to be acceptable).

01/08/2015

Page 3 of 3

8. U.S. EPA, Tarrant Elementary School, Tarrant City, AL, *available at:*  
<http://www.epa.gov/schoolair/TarrantEleResults.html>.

U.S. EPA, Tarrant Elementary School, Results and Analysis of EPA's  
Monitoring, *available at:*  
<http://www.epa.gov/schoolair/TarrantEle.html>

U.S. EPA, SAT Initiative: Tarrant Elementary School (Birmingham, AL) (June  
2011), *available at:*  
<http://www.epa.gov/schoolair/pdfs/TarrantTechReport.pdf>.

After EPA's review of these findings, the State requests EPA's withdrawal of the proposed listing. In the event EPA maintains its course of action to pursue listing, the State awaits EPA's action required by the "Fields Memo" and requests any future direction from EPA on how to proceed.

Sincerely,



Lance R. LeFleur  
Director

LRL/ghe

cc: Gina McCarthy, EPA Administrator